

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

SIOUX RURAL WATER SYSTEM, INC., a
Non-Profit Corporation

Plaintiff,
vs.

CITY OF WATERTOWN, a South Dakota
Municipality, and WATERTOWN
MUNICIPAL UTILITIES, an agency of the
CITY OF WATERTOWN

Defendants.

Civ. 15-1023

**AFFIDAVIT OF
HEATH THOMPSON IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT**

STATE OF SOUTH DAKOTA)
: SS
COUNTY OF CODINGTON)

Heath Thompson, being first duly sworn on oath, deposes and states:

1. That this Affiant is the Manager of Sioux Rural Water System [hereinafter "Sioux"], a non-profit corporation, organized under the laws of the State of South Dakota in the above-entitled matter.

2. Sioux currently has six outstanding loans with the United States Department of Agriculture, Rural Development. Sioux has a total federal indebtedness of \$2,029,059.24 as of October 1, 2016. Sioux makes payments that total \$139,584.00 yearly to the United States.

3. Sioux has been continuously, and uninterrupted, indebted to the United States Department of Agriculture since 1974, to the present.

4. Sioux's costs of operation and loan payments are paid from revenue from

the sale of water to its individual customers and bulk customers.

5. Sioux has maintained the appropriate water permits and licenses from the South Dakota Department of Natural Resources and its predecessor entities, to meet its system-wide water treatment and distribution capacity. Sioux's water is tested by the State of South Dakota and Sioux meets all State and Federal drinking water standards. True and correct copies of Sioux's Water Permits from the State of South Dakota are attached hereto as Exhibit 1.

6. Sioux provides water to over 1,435 individual members, and sells bulk water to the towns of Bryant, Kranzburg, Hazel, and Hayti.

7. Sioux water source is the Big Sioux Aquifer.

8. Sioux's raw water supply facilities are located on the Big Sioux Aquifer just west of the town of Castlewood, South Dakota.

9. Sioux's water supply is provided by two treatment plants. One treatment plant is known as the "Castlewood Plant" and is located just west of Castlewood, South Dakota. A second treatment plant is known as the "Sioux Plant" and is located approximately three miles south of the City of Watertown.

10. The Castlewood Plant generally serves the southern parts of the Sioux system.

11. The Sioux Plant generally serves the northern parts of the Sioux system, including the area adjacent to the City of Watertown.

12. The Sioux Plant has a total treatment capacity of 594,000 gallons per day.

13. Both the Castlewood Plant and the Sioux Plant use raw water supplied by the Castlewood well field.

14. The Castlewood well field consists of six shallow wells with a total well

capacity of 1,830 gallons per minute. The raw water produced by the wells in the Castlewood well field is piped to both the Castlewood Plant and the Sioux Plant for further treatment.

15. Both the Castlewood Plant and the Sioux Plant use a treatment system that utilizes the oxidation of iron and manganese followed by filtration to remove iron and manganese from the raw water supply.

16. There are 464 Sioux customers within three miles of the current city limits of the City of Watertown.

17. Sioux has continuously added and served new water users within three miles of the current city boundaries of the City of Watertown, and in and within three miles of the City of Watertown boundaries, every year since 1974.

18. Sioux has had sufficient actual capacity to serve each of the 464 water users added within three miles of the City of Watertown. Without any changes to Sioux's water production facilities, Sioux has sufficient pipes in the ground and actual capacity to serve 30-35 additional users system-wide, and in the area within 3 miles of Watertown.

19. Sioux has constructed projects over the years to prevent any shortfall in water supply capacity. Sioux has undertaken engineering studies to determine options for increasing its water treatment and supply capacity. Sioux will upgrade its water production and supply facilities as demand warrants.

20. In the summer of 2016 Sioux completed a project to improve water pressures in the area generally between Pelican Lake and Lake Kampeska, known as the "West Side" of Sioux's system adjacent to Watertown.

21. Watertown has annexed property on the West Side of Sioux's system

adjacent to Watertown and provided water service to users without allowing Sioux to have the opportunity to provide water service to those annexed areas. Those areas include Kak's Addition.

22. Sioux is required by the 7 C.F.R. § 1782.14 to initiate action to protect its federally protected service territory.

23. All of Sioux's loans and costs of operation must be paid by the sale of water to its members and its bulk customers.

24. Sioux has sufficient actual water distribution and delivery capacity within three miles of the City of Watertown to serve all of its current customers within the three mile area surrounding Watertown.

25. Sioux provides water at a rate competitive with other rural water rates in the State of South Dakota.

26. Watertown annexed numerous properties into the City that Sioux had either provided service to, or had pipes in the ground available to serve future customers. On the east side of the City, those areas include businesses identified as Titan Machinery, Federal Express, Big Shot Fireworks, Dakota Automation, Randy Hartley, Watertown Truck and Trailer, Lew's Fireworks, McFleegs Feed, Rising Star, Jim Aesoph—Car Wash, Jim Aesoph, Wheelco, and Wayne Weelborg.

27. Watertown and WMU demanded until December 4, 1996 that Sioux sign a "Municipal Agreement" if Sioux wanted to serve a customer within 3 miles of the Watertown Municipal boundary. On December 4, 1996 the Watertown City Attorney at the time, Vincent Foley, wrote to Sioux and stated "rather than execute the agreement, the City of Watertown will elect to be governed by SDCL Chap. 9-47." From that point on, Sioux would send lists of customers and prospective customers to WMU that were

within 3 miles of the city boundary. WMU would then “approve” or “deny” Sioux serving customers in that 3 miles area. A true and correct copy of the various agreements and correspondence is attached hereto as Exhibit 2.

28. In August 2012 Sioux had a pipeline on the south border of Watertown that went to a lot that had been annexed into Watertown for a new Cenex Harvest States facility. Watertown “denied” Sioux’s request to serve the new Cenex Harvest States facility, along with Sioux’s attempt to serve an individual hookup, Terry Ingalls, stating in an email from Jeff Deville that “we have water main adjacent to both of these properties and CHS is in the City limits.” A true and correct copy of the e-mail chain concerning this issue is attached hereto as Exhibit 3.

29. Sioux had the capacity to serve both Cenex Harvest States and Terry Ingalls with potable water.

30. On September 19, 2013, Sioux’s corporate counsel wrote to the Watertown City Attorney at the time, Stanton Fox, regarding an annexation Watertown had made on the eastside of the City. This location was for a Titan Machinery building. Before Titan Machinery purchased the property, the property was a farmstead served by Sioux. Sioux asked Watertown to reimburse it under SDCL 9-47. Watertown refused to pay Sioux, claiming that the City had no obligation to pay Sioux because Titan Machinery had never been served by Sioux. Sioux’s counsel then wrote the Watertown City Attorney and advised him that Sioux had loans from the Federal Government that were protected by 7 U.S.C. § 1926(b). City Attorney Fox then wrote corporate counsel that it was Watertown’s position that unless a federal loan was taken to directly serve the specific location at issue, the Titan Machinery site, there was no § 1926(b) protection. A true and correct copy of the e-mail chain concerning this issue is attached hereto as

Exhibit 4.

31. Sioux's corporate counsel then wrote the City Attorney and stated Sioux would make no claim to serve Titan Machinery. At that time, Sioux had hired a new manager, its current manager, Heath Thompson. A forensic audit after Heath Thompson was hired showed that the former office manager, the wife of Sioux's ex-manager, had embezzled a large sum of money. The forensic audit determined that \$1,151,745.69 was missing. The former office manager was criminally prosecuted and sentenced to prison. Sioux's management at that time had its hands full dealing with the embezzlement and other management issues. A true and correct copy of the e-mail chain concerning this issue is attached hereto as Exhibit 4.

32. Sioux has a 6-inch pipeline that runs parallel to I-29 running north and south through Watertown. This line is located just east of the northbound lane of I-29.

33. Watertown has annexed areas east of I-29 and Sioux's 6-inch line. Watertown has served several businesses in this area, including businesses known as Big Shot Fireworks, Cross Country Couriers, Dakota Automation, FedEx, Randy Hartley, Watertown Truck and Trailer, Lew's Fireworks, McFleeg Feeds, Rising Star, Jim Aesoph-Car Wash, Jim Aesoph, Wilco, and Wayne Wilberg.

34. The Jim Aesoph property is located approximately 300 feet from Sioux's 6-inch line. Watertown and Watertown Municipal Utilities never asked or received permission from Sioux to serve Aesoph, nor did it pay Sioux.

35. The Federal Express site is located approximately 200 feet from Sioux's 6-inch line. Watertown and Watertown Municipal Utilities never asked or received permission from Sioux to serve Federal Express, nor did it pay Sioux.

36. The McFleeg Feeds lot is located approximately 200 feet from Sioux's 6-

inch line. Watertown and Watertown Municipal Utilities never asked or received permission from Sioux to serve McFleeg Feeds, nor did it pay Sioux.

37. Kittleson's Addition is a development on the north shore of Pelican Lake. Sioux has pipes in the ground in and near Kittleson's Addition and has 10 services installed in the Kittleson's Addition. 5 of the 10 services are active.

38. In August 2014 four new potential customers were making inquiry of the possibility of hooking up to Sioux. Sioux asked Watertown what its position was on the four potential customers. On September 26, 2014 Jeff Deville sent an email to Sioux stating that "the City has been approached by the people along the stretch of lake [Kittleson's Addition] asking to be annexed into the City. I am waiting to see the outcome of that is. I will let you know as soon as I can."

39. On October 21, 2014 Deville sent an email to Sioux stating that "we do not intend on hooking this lot to our water system. If the annexation happens it will take a considerable amount of time to get this completed and they should not have to wait for water. How this area will be served with water will have to be worked out during the annexation process."

40. Sioux took this email to mean that WMU wanted Sioux to provide water to the four potential water customers until such time Watertown annexed the sites and Watertown chose to serve them. A true and correct copy of the e-mail chain concerning this matter is attached hereto as Exhibit 5.

41. Watertown has annexed a development known as "Kak's Addition" and WMU has provided water service to 20 homes in the Kak's Addition Development.

42. Sioux has water pipes in the ground approximately 100 feet from the boundary of Kak's Addition. Watertown never paid Sioux to serve Kak's Addition and

never asked Sioux's permission to serve the area.

43. There are 3 new homes being constructed in the Kak's Addition.

Watertown is claiming that it has the right to serve those 3 new homes with water service. Sioux's water lines are 100 feet from the boundary of Kak's Addition and Sioux could provide water to those three houses within several weeks of a request for service.

44. Sioux completed a project on the west side of its system generally between Pelican Lake and Lake Kampeska to address minor pressure issues. That project was completed in the summer of 2016.

45. Sioux could provide service to the Jim Aesoph property, the Federal Express site, and the McFleeg Feeds site within several weeks, or less, of a request for service.

Dated this 7th day of November, 2016.



Heath Thompson

Subscribed and sworn to before me
this 7th day of November, 2016.



Sarah J. Bruinsma
Notary Public - South Dakota
My Commission Expires: 2-5-19

(SEAL)

